

ARKANSAS SUPREME COURT

No. CR 09-356

JEROME M. MERAZ
Petitioner

v.

HON. KENT CROW, CIRCUIT JUDGE
Respondent

Opinion Delivered June 18, 2009

PRO SE MOTION FOR RULE ON
CLERK TO FILE PETITION FOR WRIT
OF MANDAMUS WITHOUT
CERTIFIED RECORD [CIRCUIT
COURT OF CARROLL COUNTY,
EASTERN DISTRICT, CR 2007-61]

MOTION DENIED.

PER CURIAM

Now before us is a pro se motion for rule on clerk filed on April 7, 2009. Therein, petitioner Jerome M. Meraz seeks to file a pro se petition for writ of mandamus in this court without a certified record. Attached to the motion is the petition for writ of mandamus that petitioner tendered to this court, as well as exhibits to the petition and various other documents. The pleadings and exhibits relate to petitioner's attempts to timely file in the trial court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1.

According to the exhibits, on May 27, 2008, in Carroll County Circuit Court, Eastern District, petitioner entered pleas of guilty to charges of first-degree stalking, kidnapping, residential burglary and theft of property. The judgment was filed on June 16, 2008.

Petitioner contends that he completed a Rule 37.1 petition form on May 28, 2008, in which he sought to set aside the guilty pleas based on a number of grounds. The Rule 37.1 petition, a

petition to correct an illegal sentence, a motion for transcript and a petition for leave to proceed *in forma pauperis* were sent to the trial judge, Hon. Alan D. Epley. The judge received the documents on June 10, 2008, and returned the documents to petitioner along with a letter dated June 16, 2008. In the letter, the judge stated that he was unable to act on a petition that had not been filed.

Petitioner then asked his mother, Charlene Meraz, to hand-deliver the documents to the Carroll County Circuit Clerk's office. According to an affidavit submitted by petitioner, Ms. Meraz attempted to file the pleadings in late June 2008.¹ According to petitioner, the documents were date-stamped, and then the date stamp was crossed out and the documents were returned to Ms. Meraz.

The Rule 37.1 petition presented by petitioner as an exhibit is date-stamped as being received on January 19, 2009. This date appears to be an anomaly as it cannot be explained by the time line of events set out in the petition. A deputy clerk then marked through the date stamp and noted "file[-]marked in error" on the petition.

Thereafter, on October 20, 2008, the clerk accepted for filing a pro se motion to amend petitioner's unfiled Rule 37.1 petition. In the cover letter to the clerk's office, petitioner asked that the motion be filed. He also requested that a file-marked copy of a previously-filed motion to set aside the guilty verdict be returned to him, and to be given the date that the Rule 37.1 petition was filed. A hand-written response at the bottom of the letter stated:

It [the Rule 37.1 petition] was not file[-]marked – Ramona [Wilson, Carroll County Circuit Clerk] started to file[-]mark it a[n]d then didn't. Then, she sent the entire package to the Judge. Your Rule 37 is not a part of your casefile.

The letter from petitioner also asked that the pleadings be forwarded to respondent, Hon. Kent Crow, who succeeded Judge Epley on the bench. The clerk responded that the clerk's office could not do

¹In a subsequent letter to petitioner from a deputy clerk, dated August 2, 2008, the clerk stated that the documents were received in that office on July 23, 2008.

so and suggested that petitioner re-file the Rule 37.1 petition after January 1, 2009.

On November 6, 2008, the clerk accepted for filing a pro se motion to amend the “amended” Rule 37.1 petition that was filed on October 20, 2008. Therein, petitioner maintained that the original Rule 37.1 petition had been timely filed despite the clerk’s failure to file-mark the petition.

After tendering the petition for writ of mandamus to this court on December 2, 2008, , petitioner was instructed to obtain certified copies of the judgment and commitment order as well as the pleadings related to the Rule 37.1 petition. Petitioner then sent an undated letter to the clerk’s office asking for the certified documents as instructed. Apparently, petitioner did not obtain the requested documents from the clerk’s office, and petitioner filed the instant motion for rule on clerk.

Recently, in *White v. State*, 373 Ark. 415, ___ S.W.3d ___ (2008) (per curiam), we addressed the timely filing of a notice of appeal from the denial of a Rule 37.1 petition. In *White*, we held that “[w]hether the appellant is determined to be a pauper or not, . . . the circuit clerk may not decline to promptly file a notice of appeal concerning a denial of postconviction relief under Rule 37.1.” 373 Ark. at ___, ___ S.W.3d at ___.

This holding likewise applies when a criminal defendant is attempting to file a petition for postconviction relief where the time limits for filing the petition are jurisdictional in nature. *See Jackson v. State*, 369 Ark. 207, 252 S.W.3d 133 (2007) (per curiam) (holding that a circuit court can not grant relief on an untimely Rule 37.1 petition.) Thus, a circuit court clerk may not decline to file, or delay the filing of, a Rule 37.1 petition while awaiting the trial court’s decision of whether to grant or deny a motion for leave to proceed *in forma pauperis* in the matter, a motion for appointment of counsel or for any other reason.

After the Rule 37.1 petition has been filed, the trial court is required to rule on the petition.

Ark. R. Crim. P. 37.3. If the trial court denies the petition, petitioner would then be entitled to appeal from the trial court's denial of the petition, even if the court deemed the petition to be untimely filed.

Rule 6-1(a) of this court provides that in cases in which the jurisdiction of this court is in fact appellate, although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the trial court are treated as the record. Ark. Sup. Ct. R. 6-1(a); *Dillard v. Keith*, 336 Ark. 521, 986 S.W.2d 100 (1999) (per curiam). This court thus cannot assume jurisdiction of a petition for writ of mandamus without a certified record.

This matter, though, presents an antecedent bar to relief because the Carroll County Clerk's Office refused to file the Rule 37.1 petition, although the clerk's rationale for doing so is unclear. The proper remedy for resolution does not lie with this court, but rather with the circuit court.

As mandamus will not lie in this court, the motion for rule on clerk is denied.

Motion denied.